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Promotion and protection of the rights of children: rights of indigenous peoples

Status of the Convention on the Rights of the Child

Report of the Secretary-General

Summary

The General Assembly, by its resolution 44/25, adopted the Convention on the Rights of the Child. As at 1 July 2012, the Convention had been ratified or acceded to by 193 States, and 2 States had signed but not yet ratified the Convention. By its resolution 54/263, the Assembly adopted two Optional Protocols to the Convention. As of 1 July 2012, the Optional Protocol on the involvement of children in armed conflict had been ratified by 147 States, and the Optional Protocol on the sale of children, child prostitution and child pornography had been ratified by 158 States. Pursuant to resolution 66/141, safeguarding the rights of indigenous children is the focus of section IV of the present report, which highlights issues relating to the human rights of indigenous children; cross-cutting issues such as respect for cultural identity; protection from discrimination and the implementation of the rights of indigenous children; education; health; protection; participation; and perspectives on ways forward.

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I. Introduction

1. In its resolution 66/141, the General Assembly requested the Secretary-General to submit to the Assembly at its sixty-seventh session a report on the status of the Convention on the Rights of the Child, with a focus on indigenous children, bearing in mind relevant international norms and standards and regional and national particularities. The present report is submitted in accordance with that request.

II. Status of the Convention on the Rights of the Child

2. As of 1 July 2012, the Convention on the Rights of the Child[1] had been ratified or acceded to by 193 States, while 2 States had signed but not ratified the Convention.[2]

3. As of 1 July 2012, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict[3] had been ratified by 147 States, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography[4] had been ratified by 158 States.

4. Additionally, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted by the General Assembly in its resolution 66/138 of 19 December 2011 and opened for signature on 28 February 2012. As of 25 July 2012, the Optional Protocol had been signed by 25 States. It will enter into force three months after the deposit of the tenth instrument of ratification or accession, in accordance with article 19 (1) of the Optional Protocol.[5]

III. Implementation of the Convention on the Rights of the Child

5. During the reporting period, the Committee on the Rights of the Child held its fifty-eighth to sixtieth sessions at the United Nations Office at Geneva, from 19 September to 7 October 2011, from 16 January to 3 February 2012 and from 29 May to 15 June 2012.

6. As of 1 July 2011, the Committee has received the initial reports of all but two States parties. All initial reports have been reviewed by the Committee except two, which are scheduled for the Committee's sixty-second session and sixty-third sessions, respectively. In total, the Committee has received 541 reports pursuant to article 44 of the Convention.

7. Additionally, it has received 94 reports and 1 second periodic report under the Optional Protocol to the Convention on the involvement of children in armed

[1] United Nations, *Treaty Series*, vol. 1577, No. 27531.
[2] See http://www2.ohchr.org/english/bodies/crc/.
[3] United Nations, *Treaty Series*, vol. 2173, No. 27531.
[4] Ibid., vol. 2171, No. 27531.
[5] See http://www2.ohchr.org/english/bodies/crc/.

conflict, and 78 reports and 1 second periodic report under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.[6]

8. The Chair of the Committee will present his oral report to the General Assembly at its sixty-seventh session, addressing major issues related to the work of the Committee during the past year. In addition, the Chair will also have the possibility for the first time to engage in an interactive dialogue with the Assembly, in accordance with Assembly resolution 66/141.

IV. Safeguarding the rights of indigenous children

A. The human rights of indigenous children

9. Indigenous children suffer extreme forms of exclusion and discrimination, which result in a denial or curtailment of their access to, inter alia, education, health, birth registration and protection. Children of indigenous background, like all other children, are rights holders and are therefore entitled, without discrimination, to all the safeguards that are necessary for their survival, development and protection.

10. The creation and strengthening of indigenous peoples' organizations, and the establishment of United Nations bodies and structures such as the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples; and the various special procedures of the Human Rights Council and the African Commission on Human and Peoples' Rights, as well as progressive developments in the jurisprudence of the Inter-American system of human rights, are offering unique opportunities to bring issues affecting indigenous children to the forefront of national, regional and global agendas.

11. Indigenous children enjoy both individual and collective rights and freedoms as do their wider communities. Indigenous peoples' collective freedoms are specifically guaranteed under article 27 of the International Covenant on Civil and Political Rights,[7] in the International Labour Organization (ILO) Indigenous and Tribal Peoples' Convention, 1989 (No. 169)[8] and in the United Nations Declaration on the Rights of Indigenous Peoples.[9]

12. Rights guaranteed by the Convention on the Rights of the Child are applicable to all children irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The Convention is underpinned by the principles of equality and non-discrimination (article 2); the best interests of the child (article 3); the right to life, survival and development (article 6); and the right to be heard and to participate (article 12). The principle of equality and non-discrimination are also reinforced in ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples which stress that indigenous peoples are entitled to enjoy both their individual and collective rights as individuals and as a group free from discrimination of any kind. The rights

[6] See http://www2.ohchr.org/english/bodies/crc/sessions.htm.

[7] See General Assembly resolution 2200 A (XXI), annex.

[8] United Nations, *Treaty Series*, vol. 1650, No. 28383.

[9] General Assembly resolution 61/295, annex.

of indigenous children are underpinned not only by the principles of the Convention on the Rights of the Child but also by the principles of self-identification, and respect for cultural identity, as espoused under the Declaration.

13. The United Nations Declaration on the Rights of Indigenous Peoples contains child-sensitive provisions: recognizing the right of indigenous families and communities to retain shared responsibilities for the upbringing, training, education and well-being of their children, and protection of the child from forceful removal from its group to another group (article 7); the right of the child to all levels and forms of education of the State without discrimination (article 14.2); and the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account the special vulnerability of children and the importance of education for their empowerment (article 17.2).

14. The Permanent Forum on Indigenous Issues devoted its second session in 2003 to the theme indigenous children and youth. Noting gaps in their access to critical services, their exposure to exploitation, violence and abuse, and the high levels of suicide, the Forum recommended actions to address these concerns encompassing a number of stakeholders. Furthermore, information on indigenous children is growing with the integration of their situation in reports of the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Such efforts are being strengthened by the growing body of guidance and recommendations of treaty bodies and the ILO Committee of Experts, among others.

B. Cross-cutting issues

15. The situation of indigenous children is inextricably linked to the histories and experiences of the wider indigenous communities in which they live. Issues of a cross-cutting nature impacting upon all rights of indigenous children include: respect for cultural identity; protection from discrimination; and the implementation of the rights of indigenous children.

Respect for cultural identity

16. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognizes the place of cultures in humanity, including by and for persons of indigenous background.[10] The Committee on Economic, Social and Cultural Rights notes that culture is a broad and inclusive concept encompassing, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter, and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence.[11]

[10] See http://unesdoc.unesco.org/images/0014/001429/142919e.pdf for the full text of the Convention.

[11] See general comment No. 21 of the Committee on Economic, Social and Cultural Rights (E/C.12/GC/21) of 21 December 2009.

17. Article 30 of the Convention on the Rights of the Child directs States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist to ensure that a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

18. Culture impacts on the manner in which the rights of indigenous children are implemented. As noted by the Convention on the Rights of the Child, for instance, one of the fundamental aims of education is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth. Thus, education must be culturally appropriate, include human rights education, enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies.

19. Reports of the Special Rapporteur on the rights of indigenous peoples cite numerous instances in which the cultural identities of indigenous peoples have been compromised, noting situations in which indigenous languages have become extinct owing to cultural assimilation into larger populations. While some three quarters of the world's 6,000 languages are spoken by indigenous peoples, the Secretary-General noted during the tenth session of the Permanent Forum on Indigenous Issues in 2011 that one indigenous language dies every two weeks and that indigenous cultures are threatened with extinction.

Discrimination

20. Children of indigenous background often suffer within schools and communities from various forms of abuse rooted in discrimination and discriminatory attitudes. The Committee on the Elimination of Racial Discrimination has consistently affirmed that all appropriate means must be taken to combat and eliminate such discrimination.[12] The Committee has been concerned that in many regions of the world, indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and, in particular, those that relate to their territories, land and other resources.[13] Interpersonal discrimination, taking the form of attitudes of rejection and exclusion in schools, public places and the street, is often accentuated by stereotypes and prejudices which are deleterious to the image of the indigenous child across society.

21. Discrimination tends to be both a cause and consequence of the current situation of indigenous peoples who, continuing to be overrepresented among the poor, the illiterate and the unemployed, constitute 15 per cent of the world's poor and one third of the world's 900 million extremely poor rural peoples.[14] Forceful removal from ancestral land, restrictions on access to other natural resources, severe impacts of climate change, lack of jobs and insecure working conditions combine to impact negatively on indigenous children. In many countries, development projects for example, construction of dams, mining, oil exploration, plantation developments

[12] See general recommendation No. 23 of the Committee on the Elimination of Racial Discrimination on rights of indigenous peoples. Available from http://www2.ohchr.org/english/bodies/cerd/comments.htm.

[13] Ibid.

[14] *State of the World's Indigenous Peoples* (United Nations publication, Sales No. E.09.VI.13), p.21.

and logging, including those managed by the private sector, which are often undertaken without the free, prior and informed consent of indigenous peoples and without regard to appropriate compensation – tend to impact negatively on poverty reduction efforts, which in turn directly affects the situation of indigenous children and the fulfilment of their rights.

22. Specific groups of indigenous children such as those with disabilities, those affected by HIV/AIDS, those without parental care, and those living within the context of migration and rural locations, face special vulnerability. In this regard, by way of example, indigenous rural girls with disabilities are more likely to face more complex forms of discrimination compared with other groups of indigenous children.

23. As this report demonstrates, disparities between indigenous and non-indigenous populations in respect of access to quality education, health care and other services are pervasive within countries and across regions. Reviews of reports on the Millennium Development Goals from approximately 40 countries in Africa, Latin America and Asia and the Pacific have found that, with very few exceptions, indigenous peoples' input has not been included in national Goals monitoring and reporting.[15]

General measures of implementation

24. In 2009, the Committee on the Rights of the Child issued general comment No. 11 on indigenous children and their rights under the Convention,[16] which calls for basic measures to be taken in support of the implementation of the rights of indigenous children. Further, a growing number of national Governments have modified their constitutions and legislation, by integrating specific provisions that are protective of children, in an effort to recognize the rights of indigenous peoples. Examples include the recently passed Law on the Promotion and Protection of Indigenous Peoples' Rights of the Congo (2011) and the Indigenous Peoples Rights Act of the Philippines (1997). Despite the availability of legal protection, alleged violations of the human rights of indigenous children, due to weak enforcement, weak institutional mechanisms and limited awareness of their rights, are frequently reported.

25. Although data collection on the basis of ethnicity is growing globally, as seen in the design of a number of demographic health surveys, statistics on how ethnicity interacts with age and sex tend to be limited, thus potentially impacting on the design of sustained initiatives for specific groups of indigenous children such as adolescents and girls. In its various concluding observations, the Committee on the Rights of the Child has consistently noted the critical importance of disaggregated data analysis for the effective targeting of interventions in favour of marginalized children.

[15] These reviews are available online from http://www.un.org/indigenous. This observation is also made in *State of the World's Indigenous Peoples*, p. 40.

[16] See http://www2.ohchr.org/english/bodies/crc/docs/GC.11_indigenous_New.pdf for the full text of general comment No. 11.

C. Education

26. The Convention on the Rights of the Child asserts the right of every child to education on the basis of equality of opportunity (article 28) and sets out the aim of education for all children as being directed to, among other objectives, "the development of respect for the child's ... cultural identity, language and values ... and for civilizations different from his or her own" (article 29). The CRC Committee's general comment No. 11 of the Committee on the Rights of the Child provides guidance on how these obligations are to be implemented by States parties with respect to indigenous children.[17]

27. Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples underscores the rights of every indigenous child to all levels and forms of education of the State without discrimination (para. 2), and recognizes that indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning (para. 1). Article 12 (1) provides that indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; and article 13 (1) recognizes that indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures.

28. As noted by the Expert Mechanism on the Rights of Indigenous Peoples, the implementation of the right to education is of crucial importance to indigenous children and indigenous peoples as a whole, being an essential means of their achieving individual empowerment and self-determination, as well as of enjoying, maintaining and respecting indigenous cultures, languages, traditions and traditional knowledge.[18] Research has shown that children attain better results in education if they receive instruction in their mother tongue.

29. The Expert Mechanism on the Rights of Indigenous Peoples also highlights the importance of both traditional education and formal education and their complementarity, noting in particular that traditional education is a lifelong pedagogic process and encompasses an intergenerational transfer of knowledge aimed at maintaining a flourishing and harmonious society or community. Through various studies, ILO has also underscored the critical role of traditional forms of education in the survival and development of indigenous children.[19]

30. As noted in *State of the World's Indigenous Peoples* (p. 132), indigenous children face significant challenges in exercising their right to education, which results in their having, in most countries throughout the world, low school enrolments, poor school performance, low literacy rates, high dropout rates, and disparities in academic achievements nationally. In a number of countries, children from indigenous communities may not be in school at all, owing to factors such as poverty, long distance to the nearest school, the absence of bilingual education and

[17] Ibid., paras. 56-63.

[18] See Report of the Expert Mechanism on the Rights of Indigenous Peoples entitled "Study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education" (A/HRC/EMRIP/2009/2), para. 6. Issued on 26 June 2009.

[19] For example, see Peter Bille Larsen, *Indigenous and Tribal Children: Assessing Child Labour and Education Challenges* (Geneva, International Labour Office, 2003).

lack of consistency between the academic calendar and seasonal occupations, such as subsistence farming, hunter-gathering and pastoral occupations.[20]

31. *State of the Worlds' Indigenous Peoples* (p. 132), for example, notes the gaps that persist between indigenous and non-indigenous children in terms of total years of schooling in five Latin American countries (Bolivia (Plurinational State of), 3.7 years; Ecuador, 2.6 years; Guatemala, 3.2 years; Mexico, 3.3 years; and Peru, 2.3 years). It also highlights (p. 133) the gaps between indigenous and non-indigenous rates of high-school graduation in some industrialized countries (Australia, 26 per cent; Canada, 28 per cent; New Zealand, 13.2 per cent; United States of America Native American/Alaska Native, 9.5 per cent; and Native Hawaiian/Pacific islander, 2.1 per cent).[21]

32. Visits by the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights to countries such as Botswana, Burundi, Namibia, South Africa and Uganda have furthermore highlighted lower rates in educational enrolment and retention among African indigenous children, as compared with non-indigenous children, expressing concerns such as discrimination, negative stereotyping, lack of mother-tongue instruction and lack of infrastructure, teaching materials and qualified teachers as common problems in education systems.[22]

33. The Special Rapporteur on the right to education has expressed concerns about the impact of lack of birth registration on the realization of indigenous children's right to education, particularly in cases where a birth certificate is required for admission to school;[23] indigenous peoples' having markedly less years of schooling when compared with non-indigenous populations (particularly at the secondary level); the limited qualifications of teachers of indigenous children; and inequalities in the provision of school materials and deficient infrastructure of indigenous schools.[24] The Special Rapporteur on the Rights of Indigenous Peoples has expressed similar concerns, including about the lack of schools that have adapted to seasonal patterns of hunting and gathering of indigenous peoples, so as to enable indigenous children to attend school.[25]

34. The Expert Mechanism on the Rights of Indigenous Peoples has suggested that the Education for All framework, which specifies six education goals to meet the learning needs of all children, youth and adults by 2015, could be a useful basis for

[20] Ibid.

[21] The report cites the following sources in this regard: Australian Bureau of Statistics (2008); S. C. Stewart (2006); New Zealand Household Labour Force Survey (2008); and United States Census Bureau (2000).

[22] See reports of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights. Available from http://www.achpr.org/.

[23] See addendum 2 to the report of the Special Rapporteur on the right to education, Vernor Muñoz Villalobos (A/HRC/11/8/Add.2), of 20 March 2009, para. 33.

[24] See the report of the Special Rapporteur on the right to education, Mr. Vernor Muñoz, on his mission to Paraguay (14-27 April 2009) (A/HRC/14/25/Add.2) of 16 March 2010, paras. 56, 57 and 58.

[25] See addendum 5 to the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of indigenous peoples in the Republic of the Congo (A/HRC/18/35/Add.5), of 11 July 2011, para. 23.

data-gathering.[26] It has also suggested that human rights indicators, most notably the methodology on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights and endorsed by human rights treaty bodies in June 2008,[27] could be used as a tool for capturing individual and collective attainments of indigenous peoples' right to education.[28]

35. The Committee, in its review of reports of States parties, has noted some good practices related to enhancing the realization of the right to education of indigenous children. For example, following its review of Panama's report in 2011, the Committee welcomed the State party's increased support for informal preschool education in indigenous areas and efforts to revise and modernize the national curricula. Furthermore, it welcomed legislation introduced in 2010 recognizing the right of indigenous people to bilingual and intercultural education.[29]

36. The Expert Mechanism also takes note of the experiences in Malaysia, Namibia and Norway which reveal that teaching children in their mother tongue during preschool education establishes a firm foundation and facilitates learning of other languages at a later age. Effective methods have included allowing children to meet native speakers and culture-bearers in natural community settings.[30]

37. In parts of Central Africa, the United Nations Children's Fund (UNICEF) is supporting training courses on the "Observer, réfléchir, agir" (Observe, think, act) (ORA) teaching method, which is a bilingual and intercultural education method based on active pedagogy. In the Congo, it was promoted by the Association des Pères Spiritains au Congo in 2007 and continued in 2008, when a second training module was implemented in Ényelle, Likouala Department. The schools provide a two-year programme in the local indigenous language, as well as French classes. Teachers are indigenous persons, school hours are adapted to the local life habits of the indigenous peoples, and schools are located within reach of indigenous communities. The introduction of the ORA method has shown that a preparatory bilingual education cycle can assist indigenous children in acquiring basic skills and, furthermore, prepare them for mainstream schooling.

38. In Kenya, the Maasai Girls Education Fund, a non-governmental organization, supports the education of Maasai girls through the award of scholarships on a continuous basis until each student has the knowledge and skills to enter the workforce. It therefore has a long-term impact of improving the literacy, health, and economic well-being of future Maasai women and their families and communities.[31]

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[26] *Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, para. 114.

[27] See the report of the Office of the United Nations High Commissioner for Human Rights on indicators for promoting and monitoring the implementation of human rights (HRI/MC/2008/3) of 6 June 2008.

[28] See *Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, para. 115. See also the methodology on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights and endorsed by the United Nations human rights treaty bodies in June 2008 (HRI/MC/2008/3).

[29] See "Consideration of reports submitted by States parties under article 44 of the Convention: concluding observations — Panama" (CRC/C/PAN/CO/3 and 4) of 21 December 2011, para. 62.

[30] *Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, para. 77.

[31] See http://www.maasaigirlseducation.org/.

39. Two participatory and community-based projects (one in Nicaragua, and the other in Solomon Islands) implemented by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Local and Indigenous Knowledge Systems (LINKS) programme should also be noted. They seek to reinforce transmission of indigenous knowledge, culture and language by working with formal educational systems that serve indigenous children.

D. Health

40. Article 24 of the Convention on the Rights of the Child obliges States parties to ensure that all children — which includes indigenous children — enjoy the highest attainable standard of health and have access to health-care services. The United Nations Declaration on the Rights of Indigenous Peoples underpins a similar provision and obliges States to take the steps necessary to achieve progressively the full realization of this right (article 24 (2)). However, the United Nations Declaration on the Rights of Indigenous Peoples further stipulates that indigenous peoples have the right to their traditional medicines and to maintain their health practices (article 24 (1)), and that they have the right to be actively involved in developing and determining health programmes affecting them and, as far as possible, to administer such programmes through their own institutions (article 23). Similar provisions are contained in ILO Convention No. 169 (see article 25).

41. This right is to be understood within the context of indigenous peoples' concept of health, "which extends beyond the physical and mental well-being of an individual to the spiritual balance and well-being of the community as a whole".[32] In order to improve the health situation of indigenous peoples, it is essential that a "fundamental shift" take place "in the concept of health so that it incorporates the cultures and world views of indigenous peoples as central to the design and management of State health systems".[33]

42. The Committee and other human rights treaty bodies have repeatedly expressed concerns about the profoundly significant barriers to the realization of their right to health faced by indigenous children and have thus urged States parties to consider applying special measures in order to ensure that children have access to culturally appropriate health services, among others.[34]

43. Specifically, indigenous children face barriers of the following kinds: expressions of racism and other forms of discrimination, physical inaccessibility (due to geographical location or seasonal isolation), economic inaccessibility (non-affordability) and information inaccessibility, as well as barriers within the context of the acceptability and the quality of health services.[35] Furthermore, there has been a tendency to devalue the use and efficacy of indigenous traditional medicines, although a number of countries have taken steps to promote intercultural medicine as part of their health-care system (for example, Bolivia (Plurinational State of), Ecuador and Peru). These bottlenecks lead to poor health outcomes which are evident among indigenous children.

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[32] See *State of the World's Indigenous Peoples*, p. 156.

[33] Ibid.

[34] General comment No. 11, para. 25.

[35] See *State of the World's Indigenous Peoples*, p. 173.

44. Although statistics on the health status of indigenous children tend to be extremely limited, inequities are readily identifiable in countries where data are available. *State of the World's Indigenous Peoples* (p. 22), for instance, points out that infant and child mortality has been steadily decreasing throughout Latin America over the last four decades, and child mortality is still 70 per cent higher among indigenous children; furthermore, malnutrition is twice as frequent among indigenous children in the region.

45. While noting an improvement in indigenous infant (0-12 months) mortality rates, the Steering Committee for the Review of Government Service Provision (SCRGSP) of Australia observes that mortality rates for indigenous infants and young children remain two to three times higher than those for all infants and young children.[36] Similarly in his 2011 report on the situation of Maori people in New Zealand (A/HRC/18/35/Add.4), the Special Rapporteur on the rights of indigenous peoples, James Anaya, raises the concern that "[i]nfant mortality rates are higher for Maori than Asian or European New Zealanders, and rates of childhood vaccination are lower among Maori" (para. 61).[37]

46. An analysis of health care provided for indigenous people in Africa, published in the *Lancet* in 2006, shows that measles and malaria tend to be among the major causes of childhood deaths among indigenous communities in African countries such as Cameroon, the Central African Republic, the Democratic Republic of the Congo and Uganda. Noting the higher prevalence of endemic diseases such as yaws and leprosy, the article also highlights the fact that this situation is linked to the general exclusion of indigenous peoples from health services.[38]

47. In its review of reports of States parties, the Committee has noted a number of good practices related to the right to health of indigenous children. For example, following its review of the report of Australia in 2012, the Committee welcomed "ongoing work of the Australia Bureau of Statistics to improve its collection of data relevant to the implementation of the Convention, especially the Longitudinal Study of Australian Children and the Longitudinal Study of Indigenous Children focusing on the development of children and the context in which it occurs".[39]

[36] Australia, Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Melbourne, Productivity Commission, 2009, p. 3.

[37] The Special Rapporteur relied on the New Zealand Ministry of Health publication entitled *An Indication of New Zealanders' Health 2007*, Public Health Intelligence Monitoring Report (Wellington, New Zealand, October 2007), p. 11, for this observation.

[38] See N. Ohenjo and others, "Health of indigenous people in Africa", *Lancet*, vol. 367, No. 9526 (10 June 2006), pp. 1937-1946.

[39] See "Consideration of reports submitted by States parties under article 44 of the Convention: concluding observations — Australia" (CRC/C/AUS/CO/4), of 19 June 2012, para. 21.

48. The World Bank has also identified social protection programmes such as Oportunidades (formerly Progresa) in Mexico, and similar conditional cash transfer programmes in other countries such as Brazil, where efforts to help offset the burdens of poverty, reduce opportunity costs, and increase human capital attainment for indigenous children were successful. In Mexico, the programme is reaching indigenous peoples in significantly large numbers and evaluations show significant increases in schooling attainment, health and nutrition outcomes, and short-term poverty reduction in this population.[40]

E. Protection

49. The protection of the indigenous child is linked to the security of the family and community. Violence, exploitation and abuse of indigenous children are evidence of the severe social strain under which many indigenous communities live. This is often a direct consequence of environmental degradation, displacement, the loss of traditional livelihoods, armed conflict and, in some cases, active attempts by authorities to homogenize and assimilate indigenous cultures.

50. The various forms of violence (for example, human trafficking, sexual abuse, forced labour, bonded labour, slavery, forced recruitment and harmful practices) and the settings in which they take place, as fully documented in the Secretary-General's 2006 report on violence against children and pursued by the Special Representative of the Secretary-General on violence against children, apply equally to indigenous children.[41]

51. Conflict-induced displacement has been a primary cause of migration among indigenous families. Further, reports of the Special Rapporteur on the rights of indigenous peoples document the critical situation of such migrant families, stressing that women and children in this group are particularly vulnerable. In a number of cities, indigenous children who lack any form of security or support live practically in the streets and tend to be involved in begging, street-vending and crime.[42] Moreover, he has expressed concern at the lack of a systematic social welfare system for indigenous internal migrants and their exclusion from the protection networks that other social groups have been able to build over the years.[43]

52. Armed conflicts constitute important risk factors for forced recruitment and involvement of children in armed conflicts by armed groups, displacement, death and maiming of children. Moreover, heavy military presence leads to blockage of humanitarian assistance, discontinuation of economic activity, and obstruction of vital services such as education and health. A number of reports of the Special Rapporteur on the rights of indigenous peoples provide graphic details of the impact

[40] World Bank, *Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004*, Gillette Hall and Harry Anthony Patrinos, eds. (Basingstoke, United Kingdom, Palgrave Macmillan, 2 March 2006).

[41] See Paulo Sérgio Pinheiro, *World Report on Violence against Children* (Geneva, United Nations publication, 2006).

[42] See the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen (A/HRC/4/32) of 27 February 2007, para. 65.

[43] Ibid.

of armed conflict on vaccination campaigns and cite the vulnerability of displaced indigenous children to high rates of malnutrition, respiratory disease, diarrhoea and dehydration.

53. Indigenous peoples throughout the world have historically suffered from slavery and forced labour. Studies have shown that indigenous children are at particular risk for the worst forms of child labour such as commercial sex exploitation and trafficking.[44] The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, reports that many child victims of contemporary forms of slavery belong to groups that have been historically discriminated against and marginalized, such as indigenous peoples, and notes their presence in hazardous fields such as mining and stone quarrying.[45]

54. ILO has initiated the International Programme on the Elimination of Child Labour (IPEC), targeting priority groups such as bonded labourers, trafficked children and children working under hazardous conditions and in hazardous occupations, including indigenous children. Combating child labour among indigenous children requires specific approaches, based on their rights and special needs. Furthermore, solutions must be found in close cooperation with the communities concerned, using entry points such as the promotion of education that is responsive to the linguistic, social, economic and cultural settings of indigenous children.

55. While recognizing the positive role and contribution of indigenous cultures to the upbringing and well-being of indigenous children, the international expert group meeting on combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples, held in New York from 18 to 20 January 2012, nevertheless noted the existence of harmful practices which tend to be inimical to the rights of indigenous girls and adolescents in particular, and also noted that practices such as early marriage and female genital mutilation or cutting tends to be endemic in a number of countries.

56. An ongoing study on violence against indigenous girls, adolescents and youth, sponsored by the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), ILO, and WHO and supported by the Special Representative of the Secretary-General on violence against children, supports these findings and further stresses the vulnerability of these groups to other forms of gender-based violence, such as sexual exploitation and trafficking, while noting that the settings within which violence takes place include the home, the community and health and educational institutions.[46]

57. In some settings, indigenous children also suffer institutionalization after forceful removal from their natural family settings. The loss of the opportunity to grow up under the care and protection provided by the indigenous family environment has led to loss of identity and susceptibility to suicide and abuse across generations. Indigenous children are sometimes also forced to enter boarding

[44] Larsen, *Indigenous and Tribal Children*.

[45] See document A/HRC/18/30 and Corr.1 of 4 July 2011.

[46] See Vittoria Tauli-Corpuz, Concept note and methodology: study on violence against indigenous children, female adolescents and young women (2012).

facilities, which entails placing them in locations that are far away from their families, and often uprooting them physically, spiritually and culturally from their family and traditional environment. Some regions are exploring the itinerant/mobile school model which tends to be adaptable to indigenous ways of life. In some countries, indigenous children tend to be overrepresented in foster-care programmes.[47] There have also been situations where they have been victims of adoption systems that deploy deception, illegal sales and kidnapping, which are contrary to the provisions of the Convention on the Rights of the Child and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.[48]

58. While limited data on custody and detention rates of indigenous youth are available for most countries, as noted by the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on violence against children, "[c]hildren from ethnic and minority groups are overrepresented in the criminal justice system".[49] In this regard, the Committee on the Rights of the Child has expressed concern about the unjustified and disproportionately high proportion of indigenous children in juvenile justice systems and has further noted the absence of legal assistance, judicial interpretation, and translation services for children who are brought before the judicial system.[50]

59. On the other hand, examples of good practice are worth mentioning: In Guatemala, the Population Council is implementing a first-of-its-kind gender-based violence prevention project which provides opportunities for adolescent girls to use global positioning systems to create maps of their communities (encompassing every household, building and route) in order to document where they have felt safe or at risk. The project empowers these girls to share the maps with their peers and community leaders as a means of making their concerns visible. Furthermore, in Canada, the National Indian Child Welfare Association, a private, non-profit, membership organization based in Oregon, focuses on building the capacities of tribal communities to prevent child abuse and neglect.

F. Participation

60. Indigenous children (individually and collectively) have the right to express their views freely, in all matters affecting them, with those views being given due weight in accordance with their age and maturity (article 12 of the Convention on the Rights of the Child). In order for indigenous children to be able to effectively exercise their right to be heard, they must be able to access information, including in their own language. This right is established in article 17 (d) of the Convention on the Rights of the Child, which requires that States parties "encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous".

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[47] See concept note for the International Expert Group Meeting: Indigenous Children and Youth in Detention, Custody, Foster-Care and Adoption, Vancouver, Canada, 4 and 5 March, 2010.

[48] See paras. 46-48 of general comment No. 11 of the Committee on the Rights of the Child; and selected Committee on the Rights of the Child reports of States parties.

[49] See A/HRC/21/25, para. 18.

[50] Ibid., paras. 74-77.

61. Participation in decision-making is an empowering practice, as it encourages indigenous children to become active citizens and gives visibility to their concerns. Furthermore, it helps develop their capacities, and self-esteem and leads to better decision-making outcomes.[51] In addition, the participation of indigenous children in internal and external decision-making processes nurtures exchanges between generations within communities and prepares future adults for making free and informed decisions. While the nature of children's participation and the range of decisions in which they are involved increase in accordance with their age and evolving capacities,[52] young indigenous children's view of the world must still be understood and respected "and their 'voices' heard even before they are able to communicate through spoken language".[53]

62. In its review of some reports of States parties, the Committee has raised the issue of indigenous children's right to be heard. In certain instances, it has expressed concern that the forums within which Governments can take into account the views of indigenous children are inadequate.[54] It has also expressed concern about the fact that the Convention has not been translated into certain minority languages or sufficiently disseminated. The Committee finds that this disproportionately hampers the awareness of children belonging to ethnic and indigenous groups of their rights and fundamental freedoms, as such awareness is a prerequisite for their exercising the right to participation.[55]

63. Furthermore, the Committee has expressed concern that the special linguistic requirements of children and adolescents — including indigenous children — are not being adequately taken into account in judicial and administrative decision-making processes,[56] and has specifically recommended that a State party promote the right of indigenous children to be heard in decision-making and in cultural life.[57]

64. The Expert Mechanism on the Rights of Indigenous Peoples has noted that the inclusion of indigenous youth in decision-making is essential in both internal and external forums.[58] It highlights the fact that in the Philippines, youth sectors of different indigenous peoples form part of the consultative body established by the 1997 Indigenous Peoples Rights Act, which advises the National Commission on

[51] See UNICEF and Save the Children, "Every child's rights to be heard: a resource guide on the UN Committee on the Rights of the Child general comment No. 12" (London, Save the Children UK, 2011), p. 5. Author: Gerison Landsdown.

[52] Ibid., p. 3.

[53] Report of the Secretary-General on the status of the Convention on the Rights of the Child (A/65/206) of 2 August 2010, para. 44.

[54] See "Consideration of reports submitted by States parties under article 44 of the Convention": concluding observations — Australia (CRC/C/AUS/CO/4) of 19 June 2012, para. 33.

[55] See "Consideration of reports submitted by States parties under article 44 of the Convention": concluding observations — Viet Nam (CRC/C/VNM/CO/3-4) of 15 June 2012, para. 21.

[56] See "Consideration of reports submitted by States parties under article 44 of the Convention": concluding observations — Costa Rica (CRC/C/CRI/CO/4) of 17 June 2011, para. 33.

[57] See "Consideration of reports submitted by States parties under article 44 of the Convention": concluding observations — Nicaragua (CRC/C/NIC/CO/4) of 1 October 2010, para. 84 (a).

[58] See the final report of the Expert Mechanism on the Rights of Indigenous Peoples of the study on indigenous peoples and the right to participate in decision-making (A/HRC/18/42) of 17 August 2011, annex, entitled "Expert Mechanism advice No. 2 (2011): indigenous peoples and the right to participate in decision-making", para. 32.

Indigenous Peoples on matters relating to the problems, aspirations and interests of indigenous peoples.[59]

65. The Indigenous Youth Caucus notes that in New Zealand, Maori youth are in a unique position, as they are being represented at the national level by the Young Maori Party and have a voice through the National Maori Student Body, which provides national representation on education matters.[60] Maori youth are further able to provide practical advice and feedback on relevant public policy and initiatives through the Maori Youth Council, which was established by the Minister of Maori Affairs in September 2010.[61]

66. Children's participation is an important element of the work undertaken by UNICEF to promote and protect the rights of indigenous children. In 2011, UNICEF Brazil supported the participation of over 1,000 adolescents (60 per cent of whom were girls), including indigenous and Afro-descendants from the semi-arid and Amazon regions, to take part in participatory diagnoses and community forums, which led to the drafting of 2,000 municipal action plans.

V. Ways forward

67. **The ratification of the Convention on the Rights of the Child and the endorsement of the United Nations Declaration on the Rights of Indigenous Peoples as a blueprint for the protection and promotion of the rights of indigenous peoples provide a solid basis for accelerated implementation of the rights of indigenous children. Opportunities will be created to continue to position indigenous children in the global agenda through the ongoing universal periodic review process; and national, global and regional consultations on the Millennium Development Goals framework beyond 2015 and those in respect of the 2014 World Conference on Indigenous Peoples. In the context of consultation and cooperation with indigenous peoples and indigenous children themselves, the following recommendations may serve as a broad frame of reference for the continuing work of Governments in policy formulation and implementation, as well as in support of the work of special procedures, treaty bodies, civil society and intergovernmental organizations:**

Adopt measures to prevent and eliminate all forms of discrimination against indigenous children, with actions that include:

68. **Eliminating de jure and de facto forms of discrimination against indigenous peoples as a whole, and indigenous children in particular, through appropriate constitutional and legislative reforms, ensuring provisions on fundamental human rights and freedoms and equality before the law, and**

[59] A/HRC/18/42, para. 28.

[60] See Indigenous Youth Caucus, "A situation analysis on global indigenous youth and their participation in decision-making", presented at the third session of the Expert Mechanism on the Rights of Indigenous Peoples, Geneva, 12-16 July 2010, p. 3.

[61] "In their own words!: The report of the Maori Youth Council to the Hon Dr Pita Sharples, Minister of Maori Affairs", June 2011, p. 3.

taking all appropriate measures to modify customs and practices that constitute discrimination against indigenous children.

69. **Recognizing the existence and impact of multiple forms of discrimination, in particular discrimination experienced by indigenous girls, and indigenous children with disabilities, as well as those infected and affected by HIV/AIDS. In this respect, promote the collection and utilization of data disaggregated by ethnicity, race and sex to provide evidence of inequalities faced by indigenous populations in their participation in and access to basic services, and make every effort in this regard to ensure that data are sufficiently disaggregated so as to take into account ethnicity, sex, locality, disability and other factors, bearing in mind good practices in such data-collection processes and securing international cooperation.**

70. **Awareness-raising and educational activities, including campaigns targeting the public at large and specific groups of professionals, with a view to preventing and eliminating discrimination against indigenous peoples in general and children in particular. This process must include the elimination of stereotypes and prejudices, especially those that impact on identity and on women and girls in particular, taking into account the effective and positive role that can be played by the media.**

71. **Implementing strategies to promote and protect indigenous cultures and identities through measures that include the preservation of indigenous languages and other modes of communication, such as music, dance and dress, and ensuring that both indigenous and non-indigenous children have opportunities to be exposed to the unique cultures of indigenous communities.**

***Facilitate the active participation of indigenous peoples in all stages of development planning affecting them by*:**

72. **Ensuring their right to information about all development processes affecting them.**

73. **Ensuring that, on all development projects, consultations are routinely held with affected groups, including indigenous persons and communities, if applicable.**

74. **Ensuring that standards of protection of indigenous peoples, compatible with international human rights norms, are defined in law and applied in practice, including by the private sector in its development activities.**

75. **Ensuring that indigenous peoples receive full and adequate compensation for any lands and other natural resources lost as a result of such activities.**

76. **Making special measures, such as social protection, available and accessible to poor indigenous families, particularly the rural and urban poor, as well as to indigenous women and the elderly and children in especially difficult circumstances.**

77. **Making explicit reference to the rights of indigenous peoples in poverty reduction strategy papers and other development frameworks, with a view to ensuring that socioeconomic and civil and political concerns affecting indigenous children become matters of urgent national priority.**

Undertake special measures towards the realization of the right to education of indigenous children, particularly girls, by:

78. **Making efforts to provide all indigenous children with access to all levels of education in culturally appropriate forms, including by:**

(a) **Taking measures to provide education at all levels for indigenous girls, adolescents and young women;**

(b) **Allocating targeted financial, material and human resources in order to implement policies and programmes that specifically seek to improve access to education of indigenous children (including capacity-building efforts geared towards preparing indigenous and non-indigenous teachers for the challenge of working in an indigenous bilingual school environment). Priority should be given to providing quality education to nomadic communities and indigenous peoples in remote areas and to women and girls, through mobile schools and scholarships.**

79. **Providing indigenous children with the opportunity to be taught to read and write in their own language as well as in the official languages of the country, and providing resources such as textbooks for instruction and learning.**

80. **Taking measures to protect indigenous children from violence in schools and ensuring that curricula, educational materials and history textbooks provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples, and that stereotypic or derogatory depictions of indigenous peoples, particularly girls and women, are avoided in the school setting.**

81. **Making education more accessible by supporting indigenous peoples in establishing their own educational institutions and facilities, increasing physical access to schools and ensuring that the school cycle takes into account and adjusts to cultural practices as well as agricultural seasons and ceremonial periods of indigenous peoples.**

82. **Enhancing the effective access of indigenous children with disabilities to education, on the basis of equal opportunity, in a manner conducive to their fullest possible social inclusion and individual development, including their cultural and spiritual development.**

83. **Taking measures to promote multicultural education, so as to ensure that indigenous and non-indigenous children are given opportunities to learn and appreciate different cultures, with a view to promoting respect for human rights and living together in a spirit of tolerance.**

Take special measures to promote the highest attainable standard of health and health-care services for indigenous children by:

84. **Making efforts to increase the availability of reliable, comprehensive and disaggregated data on the health situation of indigenous peoples and indigenous children in particular.**

85. **Ensuring indigenous children's equal access to health services, which, to the extent possible, should be community-based and planned and administered in a culturally sensitive manner in consultation and cooperation with the peoples concerned, and in this regard, supporting the employment of local indigenous community workers and the utilization of safe traditional medicines in both indigenous and non-indigenous health facilities.**

86. **Guaranteeing that indigenous children and their families, including those living in rural and remote areas, receive information and education on issues relating to health, reproductive services and preventive care.**

87. **Deploying specific strategies to provide indigenous adolescents with access to sexual and reproductive information and services, particularly in relation to HIV/AIDS and sexually transmitted diseases, in a culturally sensitive manner.**

88. **Designing and implementing policies for preventive measures on violence and suicide among indigenous children and safeguarding the allocation of additional financial and human resources to mental health care for indigenous children in a culturally sensitive manner, in consultation with the affected community.**

89. **Taking special actions to combat the root causes of the disproportionately high level of malnutrition and stunting among indigenous children.**

Ensure a safe environment and responsive, culturally appropriate child protection system for indigenous children:

90. **Supporting indigenous families through counselling and other culturally and spiritually appropriate methods, by promoting the unique position and roles of parents and members of the extended family or community, as provided for by local customs and international law.**

91. **Effectively protecting indigenous children from all forms of violence in all settings; and ratifying and enforcing international agreements on the rights of the child, with particular attention to the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict; on the sale of children, child prostitution and child pornography; and on a communications procedure.**

92. **Ensuring that indigenous children are not prevented from accessing essential services. Active steps should be taken to rehabilitate and reintegrate both girls and boys affected by armed conflict.**

93. **Protecting indigenous children from hazardous and exploitative forms of labour by, among other means, providing appropriate support to poor families and the necessary means of extrication from debt bondage.**

94. **Establishing both State and non-State child-sensitive counselling, complaints and reporting mechanisms.**

95. **Taking active measures towards the elimination of gender-based violence, including harmful traditional practices, sexual exploitation and trafficking, through the active involvement of communities, especially including men and boys.**

96. **Undertaking active State monitoring of cases of abuse by systems of foster care and adoption and ensuring that persons, agencies and organizations that violate the rights of indigenous children in this respect are duly punished, and where States have not already done so, ratifying the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption; and where necessary, entering into bilateral and multilateral agreements to protect children from illegal sale and trafficking.**

97. **Ensuring that justice systems follow due process for indigenous children and, furthermore, pursue policies and practices that aim at rehabilitation rather than at punishment or retribution. These should include promoting the use of diversionary measures, reconciliatory schemes such as restitution and apologies, and due process.**

***Promote and facilitate the meaningful participation of indigenous children in matters affecting them and their communities by*:**

98. **Ensuring that indigenous children are able to access information in their own language, so as to be able to effectively exercise their right to be heard.**

99. **Supporting measures aimed at making indigenous boys and girls visible in community and national decision-making processes, through structures such as national children's parliaments and school clubs.**

100. **Adopting measures in judicial and criminal proceedings to ensure that interpretation is provided free of charge, if required, and that the child is guaranteed legal assistance in a culturally appropriate, age-appropriate and sensitive manner.**